

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CESAR A. BARTUREN, JASON BORGES, RAUL
LARA MOLINA, RAYMUNDO LARA MOLINA,
MIGUEL EDUARDO TAVARA, MARCO ANTONIO
CORONA, JUAN CARLOS MOLINA, JULIO CESAR
MORENO GONZALEZ, PEDRO HERNANDEZ
HERNANDEZ, JULIO ANTONIO, JULIO CARBONEL,
EUSEBIO SANTOS FERROSQUILLO, LINO
MARTINEZ, JUAN JOSE PENA FARFAN, JOSE
FERNANDEZ, AND JORGE LEGIS CUYATE,
individually and on behalf of others similarly situated,

Plaintiffs,

-against-

WILD EDIBLES, INC., 535 THIRD AVENUE LLC
d/b/a/ WILD EDIBLES, RICHARD MARTIN, and
JONATHAN MEYER,

Defendants.

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

1. My name is Cesar Barturen.
2. I submit this affidavit in support of Plaintiffs' motion for conditional certification of this case to proceed as a collective action.
3. I was employed by Defendant Wild Edibles, Inc. ("Wild Edibles") from in or about July of 1998 until on or about December 20, 2007.
4. From in or about July of 1998 until in or around December of 1998, I worked at a Wild Edibles warehouse on Elizabeth Street in Manhattan, which also contained a small retail

AFFIDAVIT OF
CESAR A. BARTUREN

07 Civ. 8127 (LLS)

section. I prepared fish for sale and sold fish to customers. I worked Monday through Friday, from approximately 5:00 a.m. until approximately 3:00 p.m.; and Saturdays from approximately 8:00 a.m. until approximately 1:00 or 2:00 p.m. Wild Edibles paid me a flat rate of \$420.00, regardless of the hours I worked.

5. From in or about January of 1999 until in or about January of 2001 I worked at Wild Edibles' Grand Central retail location where I prepared fish for sale and sold fish to customers. I worked Monday through Friday from approximately 5:00 a.m. until approximately 3:00 p.m., and Saturdays from approximately 8:00 a.m. until between approximately 1:00 or 2:00 p.m. Wild Edibles paid me a flat rate of \$420.00, regardless of the hours I worked.

6. From in or about January of 2001 until in or about January of 2005 I continued to work at the Wild Edibles' Grand Central retail location and in addition to preparing fish for sale and selling fish to customers, I made local deliveries after the retail store closed. Therefore, in addition to my hours in the retail stores on Monday through Saturday, I worked Monday through Friday until approximately 5:00 p.m. I earned \$500.00 weekly, regardless of the hours I worked.

7. In or about January of 2005 I began working exclusively as a local delivery driver. I picked up loads of fish at Wild Edibles' 2151 Boerum Avenue, Long Island City Warehouse and delivered fish to its retail locations at Grand Central, 535 Third Ave, Adams Street Brooklyn and 45th Street between Second and Third Avenue, Manhattan and other locations in New York State. I worked Monday through Friday from approximately 3 a.m. until approximately 1:00 or 2:00 p.m; and Saturdays from approximately 8:00 a.m. until

approximately 1:00 or 2:00 p.m. Wild Edibles paid me \$650 weekly, regardless of the hours I worked.

8. Beginning in 2006 my hours changed such that I worked Monday through Friday, from approximately 2:00 a.m. until approximately 1:00 or 2:00 pm. Wild Edibles paid me \$712 weekly, regardless of the hours I worked.

9. I was never required to punch in or out on a time keeping device. Hours I actually worked were never reflected on pay stubs, or in any other record that Wild Edibles provided. Attached to this affidavit as exhibit A are true and correct copies of my pay stubs, indicating that the hours actually worked were not reflected. To the best of my knowledge, hours actually worked were not reflected on any Wild Edibles employee's pay stub or in any other record Wild Edibles maintained.

10. At all times while I was employed at Wild Edibles, to the best of my knowledge, all Wild Edibles workers consistently worked in excess of 40 hours a week, but were never paid time-and-one-half for their overtime hours. Rather, all workers were paid a flat weekly rate, regardless of the hours worked in excess of 40.

11. While I worked at Wild Edibles, I never saw any information regarding the Fair Labor Standards Act posted in any Wild Edibles location until in or about October of 2007, after this lawsuit was filed.

12. Spanish is my first language and I have limited English proficiency. To the best of my knowledge, Spanish is the first language of most of the employees at Wild Edibles, and they also have limited English proficiency.

I declare under penalty of perjury that the foregoing is true and correct.

CESAR BARTUREN

Sworn to before me this
____ day of _____, 2008

NOTARY PUBLIC

TECHNICAL LANGUAGE CONSULTANTS

Translators - Interpreters
7004 Boulevard East, Suite 32-E
Guttenberg, N.J. 07093-5046
Telephone No.: (212) 534-6165
E-mail: bernhardt2@aol.com

Isolina Bernhardt, Owner

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STATE OF NEW JERSEY

CERTIFICATE OF ACCURACY

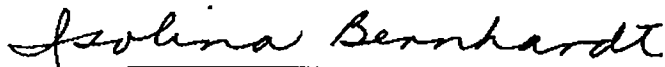
HUDSON COUNTY

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ISOLINA BERNHARDT, ss:

1. I am a federally certified Spanish-English Court Interpreter since 1980, pursuant to written and oral examinations given by the Administrative Office of the United States Courts. In such capacity, I am authorized to translate documents for judicial proceedings to be produced in Court. I have worked in such capacity in my own name and under my company's name, TECHNICAL LANGUAGE CONSULTANTS, since 1980.

2. I certify that I have translated the attached document, Affidavit from César A. Barturén, from English into Spanish, consisting of four (4) pages, to the best of my knowledge and ability.


Isolina Bernhardt
Federally Certified Court
Interpreter/Translator

Sworn to before me, this
30th day of April, 2008.


NOTARY PUBLIC

SHERRI LOU STEINER
NOTARY PUBLIC OF NEW JERSEY
My Commission Exp. June 14 2009
ID No. 2224136

TRADUCCIÓN

DECLARACIÓN JURADA – C. A. BARTUREN

TRIBUNAL FEDERAL DE PRIMERA INSTANCIA
DISTRITO SUR DE NUEVA YORK

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CÉSAR A. BARTURÉN, JASON BORGES, RAÚL
LARA MOLINA, RAYMUNDO LARA MOLINA,
MIGUEL EDUARDO TAVARA, MARCO ANTONIO
CORONA, JUAN CARLOS MOLINA, JULIO CÉSAR
MORENO GONZÁLEZ, PEDRO HERNÁNDEZ
HERNÁNDEZ, JULIO ANTONIO, JULIO CARBONEL,
EUSEBIO SANTOS FERROSQULLO, LINO
MARTÍNEZ, JUAN JOSÉ PENA FARFÁN, JOSÉ
FERNÁNDEZ, Y JORGE LEGIS CUYATE, a título
individual y a nombre de otras personas en situación
semejante,

las Partes Demandantes,

-contra-

WILD EDIBLES, INC., 535 THIRD AVENUE LLC,
realizando operaciones como WILD EDIBLES,
RICHARD MARTIN, y JONATHAN MEYER,

las Partes Demandadas.

-----X

ESTADO DE NUEVA YORK)
) ss:
CONDADO DE NUEVA YORK)

1. Me llamo César Barturén.
2. Presento esta declaración jurada en apoyo a la petición de las Partes Demandantes de que se emita una certificación condicional para que se siga esta causa como acción colectiva.

3. Estuve empleado por la Parte Demandada, Wild Edibles, Inc. ("Wild Edibles") desde julio, 1998, o desde alrededor de esa fecha, hasta el 20 de diciembre, 2007, o hasta alrededor de esa fecha.

4. Desde julio, 1998, o desde alrededor de esa fecha, hasta diciembre, 1998, o hasta alrededor de esa fecha, trabajé en el almacén de Wild Edibles en la calle Elizabeth, en Manhattan, que también incluía una pequeña sección de venta al por menor. Preparaba el pescado para la venta y vendía pescado a clientes. Trabajaba de lunes a viernes, desde las 5:00 a.m., aproximadamente, hasta las 3:00 p.m., aproximadamente; y los sábados desde las 8:00 a.m., aproximadamente, hasta la 1:00 o las 2:00 p.m., aproximadamente. Wild Edibles me pagaba una tarifa fija de \$420.00, independientemente de las horas que trabajara.

5. Desde enero, 1999, o desde alrededor de esa fecha, hasta enero, 2001, o hasta alrededor de esa fecha, trabajé en el local de venta al por menor de Wild Edibles en la Grand Central, donde preparaba pescado para la venta y vendía pescado a clientes. Trabajaba de lunes a viernes, desde las 5:00 a.m., aproximadamente, hasta las 3:00 p.m., aproximadamente; y los sábados desde las 8:00 a.m., aproximadamente, hasta la 1:00 o las 2:00 p.m., aproximadamente. Wild Edibles me pagaba una tarifa fija de \$420.00, independientemente de las horas que trabajara.

6. Desde enero, 2001, o desde alrededor de esa fecha, hasta enero, 2005, o hasta alrededor de esa fecha, continué trabajando en el local de venta al por menor de Wild Edibles en la Grand Central y, además de preparar pescado para la venta y vender pescado a clientes, efectuaba entregas locales después que cerraba la tienda de venta al por menor. Por lo tanto,

además de mis horas en la tienda de venta al por menor de lunes a sábado, trabajaba de lunes de viernes hasta las 5:00 p.m., aproximadamente. Ganaba \$500.00 semanalmente, independientemente de las horas que trabajara.

7. En enero, 2005, aproximadamente, comencé a trabajar exclusivamente como chófer, efectuando entregas locales. Recogía las cargas de pescado en el almacén de Wild Edibles, en el 2151 Boerum Avenue, Long Island City, y entregaba el pescado en sus locales de venta al por menor en la Grand Central, en el 535 de la Tercera Avenida, en la calle Adams, Brooklyn, y en la calle 45 entre la Segunda y Tercera Avenidas, Manhattan, y en otros lugares en el estado de Nueva York. Trabajaba de lunes a viernes, desde las 3:00 a.m., aproximadamente, hasta la 1:00 o las 2:00 p.m., aproximadamente; y los sábados desde las 8:00 a.m., aproximadamente, hasta la 1:00 o las 2:00 p.m., aproximadamente. Wild Edibles me pagaba \$650 semanalmente, independientemente de las horas que trabajara.

8. A partir de 2006 mi horario cambió, de manera que trabajaba de lunes a viernes desde las 2:00 a.m., aproximadamente, hasta la 1:00 o las 2:00 p.m., aproximadamente. Wild Edibles me pagaba \$712 semanalmente, independientemente de las horas que trabajara.

9. Nunca se me exigió que marcara la hora de entrada y salida en un reloj registrador. Las horas que en realidad trabajaba nunca se reflejaron en los talones de pago, ni en ningún otro documento proporcionado por Wild Edibles. Se adjuntan a la presente declaración jurada, como Anexo A, copias fieles y correctas de mis talones de pago, que indican que las horas que en realidad se trabajaban no quedaban reflejadas. Según mi leal saber, las horas que

en realidad se trabajaban no se reflejaban en ningún talón de pago de ningún empleado de Wild Edibles ni en ningún otro registro mantenido por Wild Edibles.

10. Durante todo el tiempo que estuve empleado en Wild Edibles, según mi leal saber, todos los trabajadores de Wild Edibles trabajaban sistemáticamente más de 40 horas a la semana, pero nunca se les pagó tiempo y medio por concepto de horas extraordinarias. Más bien, a todos los trabajadores se les pagaba una tarifa fija semanalmente, independientemente de las horas más que trabajaran en exceso de las 40 horas.


11. Mientras trabajé en Wild Edibles, nunca vi ninguna información relativa a la *Fair Labor Standards Act* (Ley sobre normas laborales ecuanímes) colocada en ningún local de Wild Edibles hasta octubre, 2007, o alrededor de esa fecha, después de que se entablara la presente acción judicial.

12. El español es mi primer idioma y tengo un nivel de competencia limitado en el idioma inglés. Según mi leal saber, el español es el primer idioma de la mayoría de los empleados de Wild Edibles, y también tienen un nivel de competencia limitado en el idioma inglés.

Declaro so pena de perjurio que lo que antecede es veraz y correcto.


CESAR BARTUREN

Jurado ante mí el día
29 de abril, 2008.


NOTARIO PUBLICO
NO 020030075

TA-5
{Worldox Files\NY726001\04\08009567.DOC}
NEW YORK
COUNTY
2008
2009

Employee File #
1018

Co. #
WILD EDIBL

Div. #
THIRD

Dept. #
30

Period Start
5/21/07

Period Ending
5/27/07

Employee Name
CESAR A BARTUREN SR

Check #
1018

Check Date
6/1/07

Soc. Sec. #
FW= S 0
ST= S 0

Check No. Company Name & Address
6131 535 THIRD AVENUE LLC.
WILD EDIBLES-THIRD AVENUE
535 3RD AVENUE
NEW YORK, NY 10016

EARNINGS

DESCRIPTION	HOURS	RATE	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD
REGULAR	1.00	\$600.00	\$600.00	SSEC	\$37.20		\$818.40	
				MEDI	\$8.70		\$191.40	
				FWT	\$75.17		\$1,653.86	
				SWTNY	\$24.28		\$534.16	
				LOCNYCRES	\$15.05		\$331.10	
				SDNY	\$0.60		\$13.20	

TAXES**DEDUCTIONS**

EARNINGS \$600.00 **TAXES** \$161.00 **DEDUCTIONS** \$0.00 **NET PAY** \$439.00

Employees file # 1018
 Co. # WILD EDIBL
 Div. # THIRD
 Period Start 5/28/07
 Period Ending 6/3/07
 Dept. # 30
 Check Date 6/8/07
 Employee Name CESAR A BARTUREN SR
 Clock # 1018
 FW= S 0
 ST= S 0
 Check No. 6149
 Company Name & Address
 535 THIRD AVENUE LLC.
 WILD EDIBLES-THIRD AVENUE
 535 3RD AVENUE
 NEW YORK, NY 10016

EARNINGS				TAXES				DEDUCTIONS			
DESCRIPTION	HOURS	RATE	AMOUNT	YTD	DESCRIPTION	AMOUNT	YTD	DESCRIPTION	AMOUNT	YTD	
REGULAR	1.00	\$600.00	\$600.00 ✓	\$13,800.00	SSEC	\$37.20	\$855.60				
					MEDI	\$8.70	\$200.10				
					FWT	\$75.17	\$1,729.03				
					SWTNY	\$24.28	\$558.44				
					LOCNYCRES	\$15.05	\$346.15				
					SDNY	\$0.60	\$13.80				
EARNINGS	\$600.00	TAXES	\$161.00	DEDUCTIONS	\$0.00	NET PAY	\$439.00				

Employee Name
CESAR A BARTUREN SR

Company Name & Address
6207 535 THIRD AVENUE LLC.
WILD EDIBLES-THIRD AVENUE
535 3RD AVENUE
NEW YORK, NY 10016

Check No.
6207

Employee File #
1018

Div. #
THIRD

Dept. #
30

Period Start
6/18/07

Period Ending
6/24/07

Rate
\$600.00

Hours
1.00

YTD Amount
\$600.00

YTD Description
SSEC

YTD Amount
\$15,600.00

YTD Description
MEDI

YTD Amount
\$8.70

YTD Description
FWT

YTD Amount
\$75.17

YTD Description
SWTNY

YTD Amount
\$24.28

YTD Description
LOCNYCRES

YTD Amount
\$15.05

YTD Description
SDNY

EARNINGS				TAXES				DEDUCTIONS			
DESCRIPTION	HOURS	RATE	AMOUNT	YTD DESCRIPTION	YTD AMOUNT	YTD DESCRIPTION	YTD AMOUNT	YTD DESCRIPTION	YTD AMOUNT	YTD DESCRIPTION	YTD AMOUNT
REGULAR	1.00	\$600.00	\$600.00	SSEC	\$15,600.00	MEDI	\$8.70	SSEC	\$37.20		
				FWT	\$75.17	SWTNY	\$24.28				
				LOCNYCRES	\$15.05	SDNY	\$0.60				
EARNINGS				\$600.00 TAXES				\$161.00 DEDUCTIONS			
								\$0.00 NET PAY			
								\$439.00			

Employee File # 1018
 Co. # WILD EDIBL
 Div. # THIRD
 Dept. # 30
 Period Start 7/2/07
 Period Ending 7/8/07
 Check Date 7/13/07
 Employee Name CESAR A BARTUREN SR
 Dept. # 30
 Clock # 1018
 Clock No. 6247
 Company Name & Address
 535 THIRD AVENUE LLC.
 WILD EDIBLES-THIRD AVENUE
 535 3RD AVENUE
 NEW YORK, NY 10016

EARNINGS				TAXES		DEDUCTIONS		
DESCRIPTION	HOURS	RATE	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD
REGULAR	1.00	\$600.00	\$600.00	SSEC	\$37.20		\$1,041.60	
				MEDI	\$8.70		\$243.60	
				FWT	\$75.17		\$2,104.88	
				SWTNY	\$24.28		\$679.84	
				LOCNYCRES	\$15.05		\$421.40	
				SDNY	\$0.60		\$16.80	
EARNINGS		\$600.00	TAXES	\$161.00	DEDUCTIONS	\$0.00	NET PAY	\$439.00

Employee file # 1018
 Co.# WILD EDIBL
 Div. # THIRD
 Dept.# 30
 Period Start 7/9/07
 Period Ending 7/15/07
 Check Date 7/20/07
 Check No. 6267
 Employee Name CESAR A BARTUREN SR
 Company Name & Address 535 THIRD AVENUE LLC.
 WILD EDIBLES-THIRD AVENUE
 535 3RD AVENUE
 NEW YORK, NY 10016

EARNINGS				TAXES			DEDUCTIONS			
DESCRIPTION	HOURS	RATE	AMOUNT	YTD	DESCRIPTION	AMOUNT	YTD	DESCRIPTION	AMOUNT	YTD
REGULAR	1.00	\$600.00	\$600.00	\$17,400.00	SSEC	\$37.20	\$1,078.80			
					MEDI	\$8.70	\$252.30			
					FWT	\$75.17	\$2,180.05			
					SWTNY	\$24.28	\$704.12			
					LOCNYCRES	\$15.05	\$436.45			
					SDNY	\$0.60	\$17.40			
EARNINGS	\$600.00	TAXES	\$161.00	DEDUCTIONS	\$0.00	NET PAY	\$439.00			

Check No. 6380
 Company Name & Address
535 THIRD AVENUE LLC.
 WILD EDIBLES-THIRD AVENUE
 535 3RD AVENUE
 NEW YORK, NY 10016

Employee Name
CESAR A BARTUREN SR

Soc. Sec. #

Dept. # 30
 Clerk # 1018

Div. # THIRD

FW= S 0
 ST= S 0

Period Ending
 8/26/07

Period Start
 8/20/07

EARNINGS				TAXES				DEDUCTIONS			
DESCRIPTION	HOURS	RATE	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD	YTD
REGULAR	1.00	\$600.00	\$600.00 /	SSEC	\$37.20		\$1,190.40				
				MEDI	\$8.70		\$278.40				
				FWT	\$75.17		\$2,405.56				
				SWTNY	\$24.28		\$76.96				
				LOCNYCRES	\$15.05		\$481.60				
				SDNY	\$0.60		\$19.20				
EARNINGS		\$600.00 TAXES	\$161.00 DEDUCTIONS			\$0.00 NET PAY	\$439.00				

Employee file #
1018Co #
WILD EDIBL
Period Start
9/3/07Div. #
THIRD
Period Ending
9/9/07Employee Name
CESAR A BARTUREN SRDept. #
30Clock #
1018Check Date
9/14/07FW= S 0
ST= S 0

Soc. Sec. #

Check No.
6415Company Name & Address
535 THIRD AVENUE LLC.
WILD EDIBLES-THIRD AVENUE
535 3RD AVENUE
NEW YORK, NY 10016**EARNINGS**

DESCRIPTION	HOURS	RATE	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD DESCRIPTION	AMOUNT	YTD
REGULAR	1.00	\$600.00	\$600.00	/	\$20,400.00	SSEC	\$37.20	\$1,264.80
						MEDI	\$8.70	\$295.80
						FWT	\$75.17	\$2,555.90
						SWTNY	\$24.28	\$825.52
						LOCNYCRES	\$15.05	\$511.70
						SDNY	\$0.60	\$20.40
EARNINGS		\$600.00 TAXES	\$161.00 DEDUCTIONS			\$0.00 NET PAY		\$439.00

TAXES**DEDUCTIONS**

Employee file #
1018

Company Name & Address
6452 535 THIRD AVENUE LLC.
WILD EDIBLES-THIRD AVENUE
535 3RD AVENUE
NEW YORK, NY 10016

Employee Name
CESAR A BARTUREN SR

Sec. Sec. #

Check #

Dept. #

Div. #

Period Start

Period Ending

Check Date

FW=

ST=

S 0

S 0

DEDUCTIONS

TAXES

EARNINGS

DESCRIPTION	HOURS	RATE	AMOUNT	YTD	DESCRIPTION	AMOUNT	YTD	DESCRIPTION	AMOUNT	YTD
REGULAR	1.00	\$600.00	\$600.00	\$21,600.00	SSEC	\$37.20	\$1,339.20			
					MEDI	\$8.70	\$313.20			
					FWT	\$75.17	\$2,706.24			
					SWTNY	\$24.28	\$874.08			
					LOCNYCRES	\$15.05	\$541.80			
					SDNY	\$0.60	\$21.60			

EARNINGS \$600.00 TAXES \$161.00 DEDUCTIONS \$0.00 NET PAY \$439.00

07 Civ. 8127 (LLS)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR A. BARTUREN, JASON BORGES, RAUL LARA MOLINA, RAYMUNDO LARA MOLINA, MIGUEL EDUARDO TAVARA, MARCO ANTONIO CORONA, JUAN CARLOS MOLINA, JULIO CESAR MORENO GONZALEZ, PEDRO HERNANDEZ HERNANDEZ, JULIO ANTONIO, JULIO CARBONEL, EUSEBIO SANTOS FERROSQUILLO, LINO MARTINEZ, JUAN JOSE PENA FARFAN, JOSE FERNANDEZ, AND JORGE LEGIS CUYATE, individually and on behalf of others similarly situated,

Plaintiffs,

-against-

WILD EDIBLES, INC., 535 THIRD AVENUE LLC
d/b/a/ WILD EDIBLES, RICHARD MARTIN, and
JONATHAN MEYER,

Defendants.

AFFIDAVIT OF CESAR A. BARTUREN

LEVY RATNER, P.C.
Attorneys for Plaintiffs
80 Eighth Avenue, 8th Floor
New York, N.Y. 10011-5126
(212) 627-8100

Due and timely service is hereby admitted.

New York, N.Y., 20. . .

..... Esq.

Attorney for